



ALABAMA MEDICAID AGENCY  
REQUEST FOR PROPOSALS

RFP Number: 2008-DF-001

RFP Title: Medicaid Pharmacy Dispensing Fee Survey

RFP Due Date and Time: February 15, 2008 by 5pm Central Time

Number of Pages: 36

<b>PROCUREMENT INFORMATION</b>	
<b>Project Director:</b> Kelli D. Littlejohn, Pharm.D.	<b>Issue Date:</b> February 1, 2008
<b>Phone:</b> (334) 353-4525 <b>E-mail Address:</b> kelli.littlejohn@medicaid.alabama.gov <b>Website:</b> http://www.medicaid.alabama.gov	<b>Issuing Division:</b> Pharmacy Program Administration
<b>INSTRUCTIONS TO VENDORS</b>	
<b>Return Proposal to:</b>  Kelli Littlejohn, Pharm.D. Director, Pharmacy Services Alabama Medicaid Agency Lurleen B. Wallace Building 501 Dexter Avenue PO Box 5624 Montgomery, AL 36103-5624	<b>Mark Face of Envelope/Package:</b> RFP Number: 2008-DF-001  <b>RFP Due Date:</b> February 15, 2008 by 5pm Central Time
<b>VENDOR INFORMATION</b> ( <i>Vendor must complete the following and return with RFP response</i> )	
<b>Vendor Name/Address:</b>	<b>Authorized Vendor Signatory:</b> (Please print name and sign in ink)
<b>Vendor Phone Number:</b>	<b>Vendor FAX Number:</b>
<b>Vendor Federal I.D. Number:</b>	<b>Vendor E-mail Address:</b>
<b>Firm and Fixed Price for Dispensing Fee Survey:</b>	

## Section A. RFP Checklist

1. \_\_\_\_ **Read the entire document.** Note critical items such as: mandatory requirements; supplies/services required; submittal dates; number of copies required for submittal; licensing requirements; contract requirements (i.e., contract performance security, insurance requirements, performance and/or reporting requirements, etc.).
2. \_\_\_\_ **Note the project director's name, address, phone numbers and e-mail address.** This is the only person you are allowed to communicate with regarding the RFP and is an excellent source of information for any questions you may have.
3. \_\_\_\_ **Take advantage of the "question and answer" period.** Submit your questions to the project director by the due date(s) listed in the Schedule of Events and view the answers as posted on the WEB. All addenda issued for an RFP are posted on the State's website and will include all questions asked and answered concerning the RFP.
4. \_\_\_\_ **Use the forms provided,** i.e., cover page, disclosure form, etc.
5. \_\_\_\_ **Check the State's website for RFP addenda.** It is the Vendor's responsibility to check the State's website at [www.medicaid.alabama.gov](http://www.medicaid.alabama.gov) for any addenda issued for this RFP, no further notification will be provided. Vendors must submit a signed cover sheet for each addendum issued along with your RFP response.
6. \_\_\_\_ **Review and read the RFP document again** to make sure that you have addressed all requirements. Your original response and the requested copies must be identical and be complete. The copies are provided to the evaluation committee members and will be used to score your response.
7. \_\_\_\_ **Submit your response on time.** Note all the dates and times listed in the Schedule of Events and within the document, and be sure to submit all required items on time. Late proposal responses are *never* accepted.
8. \_\_\_\_ **Prepare to sign and return the Contract and Business Associate Agreement** to expedite the contract approval process. The successful contract will have to be reviewed by the State's Contract Review Committee which has strict deadlines for document submission. Failure to submit the signed contract can delay the project start date but will not affect the deliverable date.

**This checklist is provided for assistance only and should not be submitted with Vendor's Response.**

## Section B. Schedule of Events

The following RFP Schedule of Events represents the State's best estimate of the schedule that shall be followed. Except for the deadlines associated with the vendor question and answer periods and the proposal due date, the other dates provided in the schedule are estimates and will be impacted by the number of proposals received. The State reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. Notification of any adjustment to the Schedule of Events shall be posted on the RFP website at [www.medicaid.alabama.gov](http://www.medicaid.alabama.gov).

### EVENT DATE

RFP Issued	2/1/08
Answers to Questions Posted Daily by 5 pm CT	2/4/08 – 2/8/08
Final Posting of Questions and Answers	2/8/08
Proposals Due by 5 pm CT	2/15/08
Evaluation Period	2/18/08 – 2/22/08
Contract Award Notification	2/22/08
**Contract Review Committee	3/6/08
Official Contract Award/Begin Work	3/7/08 **

\*\*By State law, this contract must be reviewed by the Legislative Contract Review Oversight Committee. The Committee meets monthly and can, at its discretion, hold a contract for up to 45 days. The “Vendor Begins Work” date above may be impacted by the timing of the contract submission to the Committee for review and/or by action of the Committee itself.

All information contained in this Request for Proposals (RFP) and amendments reflect the best and most accurate information available to Medicaid at the time of RFP preparation. No inaccuracies in such data shall constitute a basis for change of the payments to the Contractor or a basis for legal recovery of damages, actual, consequential or punitive except to the extent that such inaccuracies are the result of intentional misrepresentation by Medicaid.

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## **I. Background**

The Alabama Medicaid Agency (ALMA) is requesting proposals from vendors to conduct a study of the cost to pharmacies to dispense prescription drugs and provide professional pharmacy services to Alabama Medicaid recipients. To be eligible to provide this service, the Vendor must have expertise and experience in cost and/or statistical analysis, report generation and analysis, and be able to assist in revising/editing questions for the Alabama Medicaid Pharmacy Dispensing Fee Survey. The final Agency approved survey will be available on-line and completed by outpatient pharmacies within the State of Alabama in a manner that is administratively and financially non-burdensome by the pharmacy. The vendor will perform an analysis of this data, provide statistical information and a recommendation on the cost to pharmacies to dispense prescription drugs to Alabama Medicaid recipients. In addition, the Vendor will meet with the Agency's Pharmacy Advisory Committee to solicit comments regarding the survey's design.

The Agency's current dispensing fees are as follows:

State Plan AL-98-05/Attachment 4.19-B/Page 3/ Section 4. Prescribed Drugs/ Sub-Section d. Dispensing Fees.

d. Dispensing Fees A reasonable dispensing fee is set by the Agency. This fee is reviewed periodically for reasonableness and, when deemed appropriate by Medicaid, may be adjusted considering such factors as inflation and/or fee studies or surveys. A differential dispensing fee for dispensing may be applied according to pharmacy type. Dispensing fees paid by the Agency effective 06/01/92 are:

Retail	\$5.40
Institutional	\$3.99
Government	\$5.40
Dispensing Physicians	\$1.21

No payments made pursuant to methods and standards described in this Attachment 4.19B will exceed upper limits established in 42 CFR Section 447, Subpart D.

Data shows Alabama Medicaid Agency has currently approximately 1375 enrolled pharmacy providers. For FY '07, the Agency processed a total of just over 7 million pharmacy claims. More pharmacy specific information can be found on the ALMA website [www.medicaid.alabama.gov](http://www.medicaid.alabama.gov).

## **II. Scope of Work**

Vendor's proposal must present a plan to implement and complete a dispensing fee survey to estimate costs to all pharmacy types associated with dispensing of Alabama Medicaid outpatient prescription drugs. The Vendor's proposed plan must include a detailed description for, at minimum, the survey instrument, documentation, maintenance of confidentiality of the information submitted, analysis tools, interim and final reporting. ALMA believes the best way to obtain survey data is in electronic format from most/all pharmacies, but invites prospective Vendors to include additional recommendations in their detailed proposal; a concern is that many pharmacies do not have internet access and the proposal should offer alternative recommendations. The proposal shall indicate how pharmacies should report data, and any administrative or financial burden, if any, that will be necessary of the pharmacy. ALMA anticipates the reporting associated with this project to result in no additional charges to the pharmacy provider. The prospective Vendor shall indicate in its proposal any relevant qualifications and experience that demonstrate ability to perform any services, deliverables, or reporting required of the Contractor.

A. Services to be Performed:

ALMA anticipates the Vendor to be responsible for, at minimum, the following services:

1. Design a survey instrument to collect data elements to estimate the pharmacy costs related to dispensing prescriptions and for providing other professional services to Alabama Medicaid recipients. The Vendor will be expected to confer with ALMA during survey development and must receive approval of the instrument and documentation from ALMA prior to distribution. For planning purposes, the following guidelines should be considered (although additional data elements may be proposed by the Vendor):

*Pharmacy Sample*

The sample size should be sufficient to allow for Alabama-specific estimates to illustrate variation by observable intra-state characteristics. The Vendor should indicate how many pharmacies (and which type) they might include and a rationale for this methodology. Ideally, a nationally-representative estimate would also be provided (taken from additional cost of dispensing fee surveys recently released via other State Medicaid Agencies or other national pharmacy entities).

To derive a representative sample of pharmacies within a state, the survey results should include a sufficient number and type of pharmacies to allow for statistical comparisons between groups of pharmacies across selected stratifications, below. At least 50% of in-state pharmacies (or a sample robust enough to ensure statistically significant results) actively enrolled in Alabama Medicaid should be included in the comparison of results.

*Recommended Data Elements*

All relevant costs associated with operating a pharmacy and providing prescriptions to consumers should be included. These shall include, but not limited to:

Staffing

- Salaries and wages (pharmacists, technicians, managers, cashiers, etc.)
- Employee benefits (employer health insurance premiums, cost contributions, fees, etc.)
- Licensure and/or continuing education for pharmacists, technicians
- Payroll taxes

Store operations and overhead

- Rent or mortgage
- Cleaning, repairs and security (note additional security needs for control drugs)
- Utilities (heat, light, telephones)
- Computer systems, software and maintenance
- Equipment rental
- Marketing and advertising
- Accounting, legal and professional fees
- Insurance (liability/property insurance, worker's compensation, etc.)
- Taxes and licenses
- Interest paid on pharmacy-related debt
- Depreciation
- Complying with federal and state regulations (e.g., HIPAA)
- Corporate overhead (central management, etc.)
- Account receivable expenses (i.e., waiting on payment)



### Preparing and dispensing prescriptions

- Prescription dispensing materials (packages, labels, pill counters, etc.)
- Compounding the Rx (if necessary)
- Special packaging (unit dose, blister packs, bingo cards)
- Special supplies (syringes, inhalers)
- Inventory maintenance

### Other Professional Services

- Drug use review
- Consumer/patient counseling
- Consulting with prescribers
- Education and training

Note: ALMA currently reimburses \$0.25/minute via Prior Authorization for compounding time. The Vendor should be prepared to address, in the proposal and in the survey results, if this compounding time reimbursement should be modified by including it in the dispensing fee.

Where necessary, costs should be allocated between prescription and nonprescription sales, which requires collection of additional data elements such as total pharmacy and non-pharmacy sales, cost of goods sold, and other shared expenses (e.g., allocation of floor space, utilities, taxes, etc.). A detailed explanation should be provided of how the survey is to capture the most recent timeframe possible for which complete records are available. The proposal shall appropriately specify how costs are to be allocated (i.e. by % sale, time spent, or by square foot) for each data element. In addition, the Vendor should include a detailed description of what inflation methodology, if any will be used, how this was obtained, and any inflation factor related data. In the results, the Vendor must include all aspects of cost of dispensing, including mandatory provider fees (i.e. pharmacy tax).

The Vendor is to explain in detail how it anticipates verifying self-reported data to ensure validity. This concept is critical to the usefulness of the project, and ALMA expects each proposal to include a detailed explanation of verification, documentation, and any other necessary components to ensure the study itself will contain valid, useful information.

Disease Management, while a valid and cost-saving component of pharmacist professional services, is not a cost that the Center for Medicare and Medicaid Services (CMS) includes in a dispensing fee. The Vendor should be clear in their proposal that disease management not be included in the costs included in the survey.

The Vendor should also include in their proposal a detailed explanation of how the design of the proposed dispensing fee will cover all dispensing costs while not affecting the ingredient cost of the drug. The Vendor must have a thorough understanding that the ingredient cost of the drug does not include, nor does it relate in any way to, the cost of dispensing the drug.

#### *Desired Comparison Groups*

At a minimum, statewide dispensing cost per prescription should be calculated to show any variations across the following categories:

- i. Retail chain (4 or more stores with common ownership or corporate identity) and independent pharmacies (1 to 3 pharmacies).
- ii. Urban vs. rural pharmacies
- iii. Alabama Medicaid prescription volume (both total prescription volume and as a percentage of total prescription volume)
- iv. Long-term care prescription volume (both total prescription volume and as a percentage of total prescription volume)

Although not required, proposals may be strengthened by including additional comparisons. The value of such additions will be weighed against differences in proposal costs and/or expected timeframes.

2. Implement the survey and collect responses.
3. Compile the survey data into a database approved by ALMA for analysis.
4. Analyze the survey data, including performing appropriate statistical comparison of unweighted and weighted means to identify significant differences between specific categories of pharmacy characteristics listed above.
5. Produce explanatory report(s) and graphics to support the research findings.

#### **B. Deliverables**

A minimum of five deliverables will be expected:

1. Survey instrument and instructions. ALMA must approve the instrument and any accompanying documentation (e.g., cover letters, instructions) before the survey is sent to the sample.
2. Interim report (approximate date: March-April 2008). The interim report shall provide an update on the number of surveys received and response rate, as well as preliminary findings such as a range of costs and/or simple averages or medians.
3. Draft final report (approximate date: April 2008)
4. Final report (approximate date: May 2008).
5. Upon the final report deliverable, a CD-R containing aggregated, blinded data from survey respondents will be provided to ALMA.

#### **C. Bi-weekly reports**

The Vendor will provide at minimum bi-weekly updates to the ALMA project director, which may include a combination of emails and conference calls. At least one communication per week must be made via conference call. The Vendor will be required to conduct detailed coordination activities with the State, as well as any additional vendors (ie, EDS, our fiscal agent) necessary to implement and maintain the project. This coordination may be in electronic format, via phone/conference calls, hard copy (memos, letters, etc.), or may require face-to-face meetings.

#### **D. Final Reporting**

The Vendor shall propose what measurements shall be included in the final report. Upon completion of the final report, the Vendor must travel to ALMA to present the information to a

panel of Agency staff, as well as a subsequent time to present the information to the State Pharmacy Associations (both Agency-approved and coordinated meetings). In addition, any questions or concerns must be addressed in a time determined by the Agency.

### **III. Project Schedule**

The Vendor's response must document the resources and capability for completing the work necessary to implement the cost of dispensing survey. The Vendor proposal must include a chart/table outlining the proposed tasks needed to complete the cost of dispensing survey by a June 1, 2008 deadline, as well as outline follow-up and routine reporting deliverables and staff needed to complete the proposed tasks.

### **IV. General Medicaid Information**

ALMA is responsible for the administration of the Alabama Medicaid Program under a federally approved State Plan for Medical Assistance. Through teamwork, the Agency strives to enhance and operate a cost efficient system of payment for health care services to low income individuals through a partnership with health care providers and other health care insurers both public and private.

Medicaid's central office is located at 501 Dexter Avenue in Montgomery, Alabama. Central office personnel are responsible for data processing, program management, financial management, program integrity, general support services, professional services, and recipient eligibility services. For certain recipient categories, eligibility determination is made by Agency personnel located in ten (10) district offices throughout the state and by three hundred four (304) out-stationed workers in designated hospitals, health departments and clinics. Medicaid eligibility is also determined through established policies by the Alabama Department of Human Resources and the Social Security Administration. In FY 2005, more than 960,000 Alabama citizens were eligible for Medicaid benefits through a variety of programs.

Services covered by Medicaid include, but are not limited to, the following:

- Physician Services
- Inpatient and Outpatient Hospital Services
- Rural Health Clinic Services
- Laboratory and X-ray Services
- Nursing Home Services
- Early and Periodic Screening, Diagnosis and Treatment
- Dental for children ages zero (0) to twenty (20)
- Home Health Care Services and Durable Medical Equipment
- Family Planning Services
- Nurse-Midwife Services
- Federally Qualified Health Center Services
- Hospice Services
- Prescription Drugs
- Optometric Services
- Transportation Services
- Hearing Aids
- Intermediate Care Facilities for the Mentally Retarded and Mental Disease Services
- Prosthetic Devices
- Outpatient Surgical Services
- Renal Dialysis Services

- Home and Community Based Waiver Services
- Prenatal Clinic Services
- Mental Health Services

Additional program information can be found at [www.medicaid.alabama.gov](http://www.medicaid.alabama.gov).

## **V. Pricing**

Vendor's response must specify a firm and fixed fee for completion of the cost of dispensing development, implementation, and presentation process. The Firm and Fixed Price must be stated in the RFP Cover Sheet on the first page of this document.

## **VI. Corporate Background and References**

Vendor's response must provide a statement of the vendor's background including years in business, financial status, and a profile of current customers. Vendor must have proven experience in conducting cost of dispensing surveys and have been in business a minimum of three years. Vendor must provide a minimum of three (3) references for projects of similar size and scope. The Vendor must provide a detailed breakdown of its proposed staffing for this project, including names, education background, sex and race of all employees that will be assigned to this project. The State reserves the right to use any information or additional references deemed necessary to establish the ability of the Vendor to perform the conditions of the contract.

## **VII. Submission Requirements**

### **A. Authority**

This RFP is issued under the authority of Section 41-16-72 of the Alabama Code and 45 CFR 74.40 through 74.48. The RFP process is a procurement option allowing the award to be based on stated evaluation criteria. The RFP states the relative importance of all evaluation criteria. No other evaluation criteria, other than as outlined in the RFP, will be used.

In accordance with 45 CFR 74.43, the State encourages free and open competition among Vendors. Whenever possible, the State will design specifications, proposal requests, and conditions to accomplish this objective, consistent with the necessity to satisfy the State's need to procure technically sound, cost-effective services and supplies.

### **B. Single Point of Contact**

From the date this RFP is issued until a Vendor is selected and the selection is announced by the Project Director, all communication must be directed to the Project Director in charge of this solicitation.

**Vendors must not communicate with any State staff or officials regarding this procurement with the exception of the Project Director.** Any unauthorized contact by any representative, including a lobbyist, may disqualify the Vendor from further consideration. Contact information for the single point of contact is as follows:

*Project Director:*

**Kelli D. Littlejohn, Pharm.D.**

<i>Address:</i>	<b>Director, Pharmacy Services Division Alabama Medicaid Agency Lurleen B. Wallace Bldg. 501 Dexter Avenue PO Box 5624 Montgomery, Alabama 36103-5624</b>
<i>Telephone Number:</i>	<b>(334) 353-4525</b>
<i>Fax Number:</i>	<b>(334) 353-5623</b>
<i>E-Mail Address:</i>	<b>kelli.littlejohn@medicaid.alabama.gov</b>

### **C. RFP Documentation**

All documents and updates to the RFP including, but not limited to, the actual RFP, questions and answers, addenda, etc, will be posted to the Agency's website at [www.medicaid.alabama.gov](http://www.medicaid.alabama.gov).

### **D. Questions Regarding the RFP**

Vendors with questions requiring clarification or interpretation of any section within this RFP must submit questions via e-mail and receive formal, written replies from the State. Each question must be submitted to the Project Director via email. Questions and answers will be posted on the website daily as shown on the Schedule of Events.

### **E. Acceptance of Standard Terms and Conditions**

Vendor should submit a statement stating that the Vendor has an understanding of and will comply with the terms and conditions as set out in this RFP. Additions or exceptions to the standard terms and conditions are not allowed.

### **F. Adherence to Specifications and Requirements**

Vendor should submit a statement stating that the Vendor has an understanding of and will comply with the specifications and requirements described in this RFP.

### **G. Order of Precedence**

In the event of inconsistencies or contradictions between language contained in the RFP and a Vendor's response, the language contained in the RFP will prevail. Should the State issue addenda to the original RFP, then said addenda, being more recently issued, would prevail against both the original RFP and the Vendor's proposal in the event of an inconsistency, ambiguity, or conflict.

### **H. Vendor's Signature**

The proposal must be accompanied by the RFP Cover Sheet signed in ink by an individual authorized to legally bind the Vendor. The Vendor's signature on a proposal in response to this RFP guarantees that the offer has been established without collusion and without effort to preclude the State from obtaining the best possible supply or service. Proof of authority of the person signing the RFP response must be furnished upon request.

### **I. Offer in Effect for 90 Days**

A proposal may not be modified, withdrawn or canceled by the Vendor for a 90-day period following the deadline for proposal submission as defined in the Schedule of Events, or receipt of best and final offer, if required, and Vendor so agrees in submitting the proposal.

#### **J. State Not Responsible for Preparation Costs**

The costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the State are entirely the responsibility of the Vendor. The State is not liable for any expense incurred by the Vendor in the preparation and presentation of their proposal or any other costs incurred by the Vendor prior to execution of a contract.

#### **K. State's Rights Reserved**

While the State has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the State to award and execute a contract. Upon a determination such actions would be in its best interest, the State, in its sole discretion, reserves the right to:

- Cancel or terminate this RFP;
- Reject any or all of the proposals submitted in response to this RFP;
- Change its decision with respect to the selection and to select another proposal;
- Waive any minor irregularity in an otherwise valid proposal which would not jeopardize the overall program and to award a contract on the basis of such a waiver (minor irregularities are those which will not have a significant adverse effect on overall project cost or performance);
- Negotiate with any Vendor whose proposal is within the competitive range with respect to technical plan and cost;
- Adopt to its use all, or any part, of a Vendor's proposal and to use any idea or all ideas presented in a proposal;
- Amend the RFP (amendments to the RFP will be made by written addendum issued by the State and will be posted on the RFP website);
- Not award any contract.

#### **L. Price**

Vendors must respond to this RFP by utilizing the RFP Cover Sheet to indicate the firm and fixed price for the completion of the cost of dispensing development, implementation, and presentation process to complete the scope of work.

#### **M. Submission of Proposals**

Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to 2008-DF-001. Proposals must be sent to the attention of the Project Director and received at the Agency as specified in the Schedule of Events. It is the responsibility of the Vendor to ensure receipt of the Proposal by the date specified in the Schedule of Events.

#### **N. Copies Required**

Vendors must submit one (1) original Proposal with original signatures in ink, five (5) additional hard copies in binder form, plus one (1) electronic (Word format) copy of the Proposal on CD, jumpdrive or disc clearly labeled with the Vendor name. Vender is to identify the original hard copy clearly on the outside of the proposal.

#### **O. Late Proposals**

*Regardless of cause, late proposals will not be accepted and will automatically be disqualified from further consideration.* It shall be the Vendor's sole risk to assure delivery at the Agency by the designated time. Late proposals will not be opened and may be returned to the Vendor at the expense of the Vendor or destroyed if requested.

### **VIII. Evaluation and Selection Process**

#### **A. Initial Classification of Proposals as Responsive or Non-responsive**

All proposals will initially be classified as either "responsive" or "non-responsive." Proposals may be found non-responsive at any time during the evaluation process or contract negotiation if any of the required information is not provided; or the proposal is not within the plans and specifications described and required in the RFP. If a proposal is found to be non-responsive, it will not be considered further.

Proposals failing to demonstrate that the Vendor meets the mandatory requirements listed in Appendix A will be deemed non-responsive and not considered further in the evaluation process (and thereby rejected).

#### **B. Determination of Responsibility**

The Project Director will determine whether a Vendor has met the standards of responsibility. In determining responsibility, the Project Director may consider factors such as, but not limited to, the vendor's specialized expertise, ability to perform the work, experience and past performance. Such a determination may be made at any time during the evaluation process and through contract negotiation if information surfaces that would result in a determination of non-responsibility. If a Vendor is found non-responsive, a written determination will be made a part of the procurement file and mailed to the affected Vendor.

#### **C. Opportunity for Additional Information**

The State reserves the right to contact any Vendor submitting a proposal for the purpose of clarifying issues in that Vendor's proposal. Vendors should clearly designate in their proposal a point-of-contact for questions or issues that arise in the State's review of a Vendor's proposal.

### **IX. General Terms and Conditions**

#### **A. General**

This RFP and Contractor's response thereto shall be incorporated into a contract by the execution of a formal agreement. The contract and amendments, if any, are subject to approval by the Governor of the State of Alabama.

The contract shall include the following:

1. Executed contract,
2. RFP, and any amendments thereto,
3. Contractor's response to the RFP, and shall be construed in accordance with and in the order of the applicable provisions of:
  - Title XIX of the Social Security Act, as amended and regulations promulgated hereunder by HHS and any other applicable federal statutes and regulations
  - The statutory and case law of the State of Alabama
  - The Alabama State Plan for Medical Assistance under Title XIX of the Social Security Act, as amended
  - The Medicaid Administrative Code
  - Medicaid's written response to prospective Vendor questions

#### **B. Compliance with State and Federal Regulations**

Contractor shall perform all services under the contract in accordance with applicable federal and state statutes and regulations. Medicaid retains full operational and administrative authority and responsibility over the Alabama Medicaid Program in accordance with the requirements of the federal statutes and regulations as the same may be amended from time to time.

#### **C. Term of Contract**

The contract shall take effect when signed by all parties, and shall terminate on successful completion of specified tasks and deliverables but no later than December 31, 2008.

#### **D. Contract Amendments**

No alteration or variation of the terms of the contract shall be valid unless made in writing and duly signed by the parties thereto. The contract may be amended by written agreement duly executed by the parties. Every such amendment shall specify the date its provisions shall be effective as agreed to by the parties.

The contract shall be deemed to include all applicable provisions of the State Plan and of all state and federal laws and regulations applicable to the Alabama Medicaid Program, as they may be amended. In the event of any substantial change in such Plan, laws, or regulations, that materially affects the operation of the Alabama Medicaid Program or the costs of administering such Program, either party, after written notice and before performance of any related work, may apply in writing to the other for an equitable adjustment in compensation caused by such substantial change.

#### **E. Confidentiality**

Contractor shall treat all information, and in particular information relating to individuals and pharmacy information that is obtained by or through its performance under the contract, as confidential information to the extent confidential treatment is provided under State and Federal laws including 45 CFR §160.101 – 164.534. Contractor shall not use any information so obtained in any manner except as necessary for the proper discharge of its obligations and rights under this contract.

Contractor shall insure safeguards that restrict the use or disclosure of information concerning



individuals or pharmacy invoices to purposes directly connected with the administration of the Plan in accordance with 42 CFR Part 431, Subpart F, as specified in 42 CFR § 434.6(a)(8). Purposes directly related to the Plan administration include:

1. Establishing eligibility;
2. Determining the amount of medical assistance;
3. Providing services for recipients; and
4. Conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the Plan.

Pursuant to requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (Public Law 104-191), the successful Contractor shall sign and comply with the terms of a Business Associate agreement with the Agency (Appendix B).

#### **F. Security and Release of Information**

Contractor shall take all reasonable precautions to insure the safety and security of all information, data, procedures, methods, and funds involved in the performance under the contract, and shall require the same from all employees so involved. Contractor shall not release any data or other information relating to the Alabama Medicaid Program without prior written consent of Medicaid. This provision covers both general summary data as well as detailed, specific data. Contractor shall not be entitled to use of Alabama Medicaid Program data in its other business dealings without prior written consent of Medicaid. All requests for program data shall be referred to Medicaid for response by the Commissioner only.

#### **G. Federal Nondisclosure Requirements**

Each officer or employee of any person to whom Social Security information is or may be disclosed shall be notified in writing by such person that Social Security information disclosed to such officer or employee can be only used for authorized purposes and to that extent and any other unauthorized use herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the cost of prosecution. Such person shall also notify each such officer or employee that any such unauthorized further disclosure of Social Security information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n).

Additionally, it is incumbent upon the contractor to inform its officers and employees of penalties for improper disclosure implied by the Privacy Act of 1974, 5 USC 552a. Specifically, 5 USC 552a (1) (1), which is made applicable to contractors by 5 USC 552a (m) (1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established there under, and who knowing that disclosure of the specific material is prohibited, willfully discloses that material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

#### **H. Contract a Public Record**

Upon signing of this contract by all parties, the terms of the contract become available to the public pursuant to Alabama law. Contractor agrees to allow public access to all documents, papers, letters, or other materials subject to the current Alabama law on disclosure. It is expressly understood that substantial evidence of Contractor's refusal to comply with this provision shall constitute a material breach of contract.

#### **I. Termination for Bankruptcy**

The filing of a petition for voluntary or involuntary bankruptcy or a company or corporate reorganization pursuant to the Bankruptcy Act may constitute default by Contractor effective the date of such filing. Contractor shall inform Medicaid in writing of any such action(s) immediately upon occurrence by the most expeditious means possible. Medicaid may, at its option, declare default and notify Contractor in writing that performance under the contract is terminated and proceed to seek appropriate relief from Contractor.

#### **J. Termination for Default**

Medicaid may, by written notice, terminate performance under the contract, in whole or in part, for failure of Contractor to perform any of the contract provisions. In the event Contractor defaults in the performance of any of Contractor's material duties and obligations, written notice shall be given to Contractor specifying default. Contractor shall have 10 calendar days, or such additional time as agreed to in writing by Medicaid, after the mailing of such notice to cure any default. In the event Contractor does not cure a default within 10 calendar days, or such additional time allowed by Medicaid, Medicaid may, at its option, notify Contractor in writing that performance under the contract is terminated and proceed to seek appropriate relief from Contractor.

#### **K. Termination for Unavailability of Funds**

Performance by the State of Alabama of any of its obligations under the contract is subject to and contingent upon the availability of state and federal monies lawfully applicable for such purposes. If Medicaid, in its sole discretion, deems at any time during the term of the contract that monies lawfully applicable to this agreement shall not be available for the remainder of the term, Medicaid shall promptly notify Contractor to that effect, whereupon the obligations of the parties hereto shall end as of the date of the receipt of such notice and the contract shall at such time be cancelled without penalty to Medicaid, State or Federal Government.

#### **L. Termination for Convenience**

Medicaid may terminate performance of work under the Contract in whole or in part whenever, for any reason, Medicaid, in its sole discretion determines that such termination is in the best interest of the State. In the event that Medicaid elects to terminate the contract pursuant to this provision, it shall so notify the Contractor by certified or registered mail, return receipt requested. The termination shall be effective as of the date specified in the notice. In such event, Contractor will be entitled only to payment for all work satisfactorily completed and for reasonable, documented costs incurred in good faith for work in progress. The Contractor will not be entitled to payment for uncompleted work, or for anticipated profit, unabsorbed overhead, or any other costs.

#### **M. Force Majeure**

Contractor shall be excused from performance hereunder for any period Contractor is prevented from performing any services pursuant hereto in whole or in part as a result of an act of God, war, civil disturbance, epidemic, or court order; such nonperformance shall not be a ground for termination for default.

#### **N. Nondiscriminatory Compliance**

Contractor shall comply with Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Order No. 11246, as amended by Executive Order No. 11375, both issued by the President of the United States, the Americans with Disabilities Act of 1990, and with all applicable federal and state laws, rules and regulations implementing the foregoing statutes with respect to nondiscrimination in employment.

#### **O. Small and Minority Business Enterprise Utilization**

In accordance with the provisions of 45 CFR Part 74 and paragraph 9 of OMB Circular A-102, affirmative steps shall be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction, and services.

#### **P. Worker's Compensation**

Contractor shall take out and maintain, during the life of this contract, Worker's Compensation Insurance for all of its employees under the contract or any subcontract thereof, if required by state law.

#### **Q. Employment of State Staff**

Contractor shall not knowingly engage on a full-time, part-time, or other basis during the period of the contract any professional or technical personnel, who are or have been in the employment of Medicaid during the previous twelve (12) months, except retired employees or contractual consultants, without the written consent of Medicaid.

#### **R. Share of Contract**

No official or employee of the State of Alabama shall be admitted to any share of the contract or to any benefit that may arise there from.

#### **S. Waivers**

No covenant, condition, duty, obligation, or undertaking contained in or made a part of the contract shall be waived except by written agreement of the parties.

#### **T. Warranties Against Broker's Fees**

Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission percentage, brokerage, or contingency fee excepting bona fide employees. For breach of this warranty, Medicaid shall have the right to terminate the contract without liability.

#### **U. Novation**

In the event of a change in the corporate or company ownership of Contractor, Medicaid shall retain the right to continue the contract with the new owner or terminate the contract. The new corporate or company entity shall agree to the terms of the original contract and any amendments thereto. During the interim between legal recognition of the new entity and Medicaid execution of the novation agreement, a valid contract shall continue to exist between Medicaid and the original Contractor. When, to Medicaid's satisfaction, sufficient evidence has been presented of the new owner's ability to perform under the terms of the contract, Medicaid may approve the new owner and a novation agreement shall be executed.

#### **V. Employment Basis**

It is expressly understood and agreed that Medicaid enters into this agreement with Contractor and any subcontractor as authorized under the provisions of this contract as an independent Contractor on a purchase of service basis and not on an employer-employee basis and not subject to State Merit System law.

#### **W. Disputes and Litigation**

Except in those cases where the proposal response exceeds the requirements of the RFP, any conflict between the response of Contractor and the RFP shall be controlled by the provisions of the RFP. Any dispute concerning a question of fact arising under the contract which is not disposed of by agreement shall be decided by the Commissioner of Medicaid.

Any litigation brought by Medicaid or Contractor to enforce any provision of the contract shall be brought in either the Circuit Court of Montgomery County, Alabama, or the United States District Court for the Middle District of Alabama, Northern Division, according to the jurisdictions of these courts. This provision shall not be deemed an attempt to confer any jurisdiction on these courts which they do not by law have, but is a stipulation and agreement as to forum and venue only.

#### **X. Records Retention and Storage**

In accordance with 45 CFR §74.164, Contractor shall maintain financial records, supporting documents, statistical records, and all other records pertinent to the Alabama Medicaid Program for a period of three years from the date of the final payment made by Medicaid to Contractor under the contract. However, if audit, litigation, or other legal action by or on behalf of the State or Federal Government has begun but is not completed at the end of the three year period, or if audit findings, litigation, or other legal action have not been resolved at the end of the three year period, the records shall be retained until resolution.

#### **Y. Inspection of Records**

Contractor agrees that representatives of the Comptroller General, HHS, the General Accounting Office, the Alabama Department of Examiners of Public Accounts, and Medicaid and their authorized representatives shall have the right during business hours to inspect and copy Contractor's books and records pertaining to contract performance and costs thereof. Contractor shall cooperate fully with requests from any of the agencies listed above and shall furnish free of charge copies of all requested records. Contractor may require that a receipt be given for any

original record removed from Contractor's premises.

## **Z. Use of Federal Cost Principles**

For any terms of the contract which allow reimbursement for the cost of procuring goods, materials, supplies, equipment, or services, such procurement shall be made on a competitive basis (including the use of competitive bidding procedures) where practicable, and reimbursement for such cost under the contract shall be in accordance with 48 CFR, Chapter 1, Part 31. Further, if such reimbursement is to be made with funds derived wholly or partially from federal sources, such reimbursement shall be subject to Contractor's compliance with applicable federal procurement requirements, and the determination of costs shall be governed by federal cost principles.

## **AA. Payment**

Contractor shall submit to Medicaid a detailed invoice for compensation for the deliverable and/or work performed. Invoices should be submitted to the Project Director. Payments are dependent upon successful completion and acceptance of described work and delivery of required documentation.

## **BB. Notice to Parties**

Any notice to Medicaid under the contract shall be sufficient when mailed to the Project Director. Any notice to Contractor shall be sufficient when mailed to Contractor at the address given on the return receipt from this RFP or on the contract after signing. Notice shall be given by certified mail, return receipt requested.

## **CC. Disclosure Statement**

The successful Vendor shall be required to complete a financial disclosure statement with the executed contract.

## **DD. Debarment**

Contractor hereby certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any Federal department or agency.

## **EE. Not to Constitute a Debt of the State**

Under no circumstances shall any commitments by Medicaid constitute a debt of the State of Alabama as prohibited by Article XI, Section 213, Constitution of Alabama of 1901, as amended by Amendment 26. It is further agreed that if any provision of this contract shall contravene any statute or Constitutional provision or amendment, whether now in effect or which may, during the course of this Contract, be enacted, then that conflicting provision in the contract shall be deemed null and void. The Contractor's sole remedy for the settlement of any and all disputes arising under the terms of this agreement shall be limited to the filing of a claim against Medicaid with the Board of Adjustment for the State of Alabama.

**FF. Alternative Dispute Resolution**

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General's Office of Administrative Hearings or where appropriate, private mediators.

## Appendix A: Proposal Compliance Checklist

### NOTICE TO VENDOR:

It is highly encouraged that the following checklist be used to verify completeness of Proposal content. It is not required to submit this checklist with your proposal.

---

Vendor Name

---

Project Director

---

Review Date

*Proposals for which **ALL** applicable items are marked by the Project Director are determined to be compliant for responsive proposals.*

IF CORRECT	BASIC PROPOSAL REQUIREMENTS
<input type="checkbox"/>	1. Vendor's original proposal received on time at correct location.
<input type="checkbox"/>	2. Vendor submitted proposal in an electronic format.
<input type="checkbox"/>	3. The Proposal includes a completed and signed RFP Cover Sheet.
<input type="checkbox"/>	4. The Proposal is a complete and independent document, with no references to external documents or resources.
<input type="checkbox"/>	5. Vendor submitted signed acknowledgement of any and all addenda to RFP.
<input type="checkbox"/>	6. The Proposal includes written confirmation that the Vendor understands and shall comply with all of the provisions of the RFP.
<input type="checkbox"/>	7. The Proposal includes 3 client references (with all identifying information in specified format and order).
<input type="checkbox"/>	8. The Proposal includes a corporate background.
<input type="checkbox"/>	9. The Proposal includes a detailed description of the plan to design, implement, evaluate, and report on the cost to pharmacies to dispense prescription drugs and provide professional pharmacy services to Alabama Medicaid recipients as outlined in the request for proposal.
<input type="checkbox"/>	10. The Proposal includes completed and signed RFP Cover Sheet.

**Page 23 of this RFP corrected to reflect the accurate #9 above on 2/4/08.**

## **Appendix B: Contract and Attachments**

The following are the documents that must be signed after contract award and prior to the meeting of the Legislative Contract Review Oversight Committee. Sections to be completed by Vendor are highlighted in yellow.

### **Contract**

*Attachment A:* Business Associate Agreement

*Attachment B:* Contract Review Report for Submission to Oversight Committee

*Attachment C:* Immigration Status

*Attachment D:* Disclosure Statement

*Attachment E:* Letter Regarding Reporting to Ethics Commission

*Attachment F:* Instructions for Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion



State of Alabama

Montgomery County

KNOW ALL MEN BY THESE PRESENTS, that the Alabama Medicaid Agency, an Agency of the State of Alabama, and the undersigned Contractor agree as follows:

Contractor shall furnish all labor, equipment, and materials and perform all of the work required under the Request for Proposal (RFP) Number 2008-DF-001, dated March 7, 2008, strictly in accordance with the requirements thereof and Contractor's response thereto.

Contractor shall be compensated for performance under this contract in accordance with the provisions of Section L and the price provided on the RFP Cover Sheet.

This contract specifically incorporates by reference the RFP, any amendments thereto, and Contractor's response, including all attachments.

EXECUTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2008.

CONTRACTOR

ALABAMA MEDICAID AGENCY

This contract has been reviewed for and is approved as to content.

\_\_\_\_\_

\_\_\_\_\_

Commissioner

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

APPROVED:

This contract has been reviewed for legal form and complies with all applicable laws, rules, and regulations of the State of Alabama governing these matters.

\_\_\_\_\_  
Governor, State of Alabama

\_\_\_\_\_  
General Counsel

**ALABAMA MEDICAID AGENCY  
BUSINESS ASSOCIATE ADDENDUM**

This Business Associate Addendum (this "Agreement") is made effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Alabama Medicaid Agency ("Covered Entity"), an agency of the State of Alabama, and \_\_\_\_\_ ("Business Associate") (collectively the "Parties").

**1. BACKGROUND**

- a. Covered Entity and Business Associate are parties to a contract entitled \_\_\_\_\_ (the "Contract"), whereby Business Associate agrees to perform certain services for or on behalf of Covered Entity.
- b. The relationship between Covered Entity and Business Associate is such that the Parties believe Business Associate is or may be a "business associate" within the meaning of the HIPAA Privacy Rule (as defined below).
- c. The Parties enter into this Business Associate Addendum to the Contract with the intention of complying with the HIPAA Privacy Rule provision that a covered entity may disclose protected health information to a business associate, and may allow a business associate to create or receive protected health information on its behalf, if the covered entity obtains satisfactory assurances that the business associate will appropriately safeguard the information.

**2. DEFINITIONS**

Unless otherwise clearly indicated by the context, the following terms shall have the following meaning in this Agreement:

- a. "HIPAA" means the Administrative Simplification Provisions, Sections 261 through 264, of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- b. "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- c. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- d. "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- e. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.
- f. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his designee.
- g. Unless otherwise defined in this Agreement, capitalized terms used herein shall have the same meaning as those terms have in the Privacy Rule.

**3. OBLIGATIONS OF BUSINESS ASSOCIATE**

- a. Use and Disclosure of PHI. Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement or as Required By Law.
- b. Appropriate Safeguards. Business Associate agrees to use appropriate safeguards

to prevent use or disclosure of the PHI other than as provided for by this Agreement. The Business Associate agrees to take steps to safeguard, implement and maintain PHI in accordance with the HIPAA Privacy Rule.

c. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

d. Report Unauthorized Use or Disclosure. Business Associate agrees to promptly report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware.

e. Applicability to Business Associate's Agents. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by the Business Associate on behalf of, Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. The Business Associate agrees to have HIPAA-compliant Business Associate Agreements or equivalent contractual agreements with agents to whom the Business Associate discloses Covered Entity PHI.

f. Access. Upon receipt of a written request from Covered Entity, Business Associate agrees to provide Covered Entity, in order to allow Covered Entity to meet its requirements under 45 CFR 164.524, access to PHI maintained by Business Associate in a Designated Record Set within thirty (30) business days.

g. Amendments to PHI. Business Associate agrees to make any amendment(s) to PHI maintained by Business Associate in a Designated Record Set that Covered Entity directs or agrees to, pursuant to 45 CFR 164.526 at the request of Covered Entity, within thirty (30) calendar days after receiving a written request for amendment from Covered Entity.

h. Availability of Documents. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, Covered Entity, available to Covered Entity or to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule, within five business days' after receipt of written notice.

i. Documentation of PHI Disclosures. Business Associate agrees to keep records of disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

j. Accounting of Disclosures. The Business Associate agrees to provide to Covered Entity, within 30 days of receipt of a written request from Covered Entity, information collected in accordance with the documentation of PHI disclosure of this Agreement, to permit Covered Entity to respond to a request by an Individual or an authorized representative for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

#### **4. PERMITTED USES AND DISCLOSURES**

Except as otherwise limited in this Agreement, if the Contract permits, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity;

a. Except as otherwise limited in this Agreement, if the Contract permits, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

b. Except as otherwise limited in this Agreement, if the Contract permits, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that:

- 1) disclosures are Required By Law; or
  - 2) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. Except as otherwise limited in this Agreement, if the Contract permits, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).
- d. Notwithstanding the foregoing provisions, Business Associate may not use or disclose PHI if the use or disclosure would violate any term of the Contract.

## 5. OBLIGATIONS OF COVERED ENTITY

- a. Covered Entity shall notify the Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect Alabama Medicaid's use or disclosure of PHI.
- b. Covered Entity shall notify the Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect the Business Associate's use or disclosure of PHI.
- c. Covered Entity shall notify the Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- d. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.
- e. Covered Entity shall provide Business Associate with only that PHI which is minimally necessary for Business Associate to provide the services.

## 6. TERM AND TERMINATION

- a. **Term.** The Term of this Agreement shall be effective as of the effective date stated above and shall terminate when the Contract terminates.
- b. **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may, at its option:
  - 1) Provide an opportunity for Business Associate to cure the breach or end the violation, and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
  - 2) Immediately terminate this Agreement; or
  - 3) If neither termination nor cure is feasible, report the violation to the Secretary as provided in the Privacy Rule.
- c. **Effect of Termination.**
  - 1) Except as provided in paragraph (2) of this section or in the Contract, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

2) In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible. Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## **7. GENERAL TERMS AND CONDITIONS**

- a. This Agreement amends and is part of the Contract.
- b. Except as provided in this Agreement, all terms and conditions of the Contract shall remain in force and shall apply to this Agreement as if set forth fully herein.
- c. In the event of a conflict in terms between this Agreement and the Contract, the interpretation that is in accordance with the Privacy Rule shall prevail. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.
- d. A breach of this Agreement by Business Associate shall be considered sufficient basis for Covered Entity to terminate the Contract for cause.
- e. The Parties agree to take such action as is necessary to amend this Agreement from time to time for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.

IN WITNESS WHEREOF, Covered Entity and Business Associate have executed this Agreement effective on the date as stated above.

### **ALABAMA MEDICAID AGENCY**

Signature: \_\_\_\_\_

Printed Name: Paul Brannan

Title: Privacy Officer

Date: \_\_\_\_\_

### **BUSINESS ASSOCIATE**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Contract Review Permanent Legislative Oversight Committee  
Alabama State House  
Montgomery, Alabama 36130  
**CONTRACT REVIEW REPORT**  
(Separate review report required for each contract)

Name of State Agency: Alabama Medicaid Agency

Name of Contractor: \_\_\_\_\_

Contractor's Physical Street Address(No. P.O. Box) \_\_\_\_\_ City \_\_\_\_\_ State/Zip \_\_\_\_\_  
Is Contractor Registered with Alabama Secretary of State to do Business as a Corporation in Alabama?  
YES \_\_\_\_\_ NO \_\_\_\_\_ If Yes, in what State is Contractor Incorporated? \_\_\_\_\_  
Is Act 2001-955 Disclosure Form Included with this Contract? YES X NO \_\_\_\_\_  
Was a Lobbyist/Consultant Used to Secure this Contract? YES \_\_\_\_\_ NO \_\_\_\_\_

If Yes, Give Name: \_\_\_\_\_

Contract Number: \_\_\_\_\_ (To be assigned by Administrative Procedures Officer)

Contract/Amendment Total: \$ \_\_\_\_\_ (estimate if necessary)

% of State Funds: \_\_\_\_\_ % of Federal Funds: \_\_\_\_\_ % Other Funds: \*\*

\*\*Please Specify source of Other Funds (Fees, Grants, etc.) \_\_\_\_\_

Date Contract Effective: \_\_\_\_\_ Date Contract Ends: \_\_\_\_\_

Type of Contract: NEW: \_\_\_\_\_ RENEWAL: \_\_\_\_\_ AMENDMENT: \_\_\_\_\_

If renewal, was it originally Bid? Yes \_\_\_\_\_ No \_\_\_\_\_

If AMENDMENT, Complete A through C:

[A] Original contract total \$ \_\_\_\_\_

[B] Amended total prior to this amendment \$ \_\_\_\_\_

[C] Amended total after this amendment \$ \_\_\_\_\_

Was Contract secured through Bid Process? Yes \_\_\_\_\_ No \_\_\_\_\_ Was lowest Bid accepted? Yes \_\_\_\_\_ No \_\_\_\_\_

Was Contract secured through RFP Process? Yes \_\_\_\_\_ No \_\_\_\_\_ Date RFP was awarded \_\_\_\_\_

Summary of Contract Services to be Provided: \_\_\_\_\_

Why Contract Necessary AND why this service cannot be performed by merit employee: \_\_\_\_\_

*I certify that the above information is correct.*

\_\_\_\_\_  
Signature of Agency Head

Carol H. Steckel, Commissioner

Printed Name

Agency Contact: Mary Ann Fannin

\_\_\_\_\_  
Signature of Contractor

\_\_\_\_\_  
Printed Name

Phone: 242-5833

If this contract was not competitively Bid, why?

---

---

If this contract was not competitively Bid because the contractor is a sole source provider, please explain who made the sole source determination and on what basis:

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---

---

If contract was awarded by RFP, what process was used, how many vendors were contacted, and how many proposals were received:

---

---

---

If this contract was not awarded through either Bid or RFP process, why? \_\_\_\_\_

---

Did agency attempt to hire a State Employee? If so who from Personnel Department did you talk to?

---

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---

How many additional contracts does contractor have with the State of Alabama and which agencies are they with?

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Carol H. Steckel, Commissioner

**IMMIGRATION STATUS**

I hereby attest that all workers on this project are either citizens of the United States or are in a proper and legal immigration status that authorizes them to be employed for pay within the United States.

\_\_\_\_\_  
Signature of Contractor

\_\_\_\_\_  
Witness





# State of Alabama Disclosure Statement

(Required by Act 2001-955)

ENTITY COMPLETING FORM

ADDRESS

CITY, STATE, ZIP

TELEPHONE NUMBER

( )

STATE AGENCY/DEPARTMENT THAT WILL RECEIVE GOODS, SERVICES, OR IS RESPONSIBLE FOR GRANT AWARD

Alabama Medicaid Agency

ADDRESS

501 Dexter Avenue

CITY, STATE, ZIP

Montgomery, Alabama 36130-5626

TELEPHONE NUMBER

(334) 242-5833

This form is provided with:

☐

Contract

☐

Proposal

☐

Request for Proposal

☐

Invitation to Bid

☐

Grant Proposal

Have you or any of your partners, divisions, or any related business units previously performed work or provided goods to any State Agency/Department in the current or last fiscal year?

☐

Yes

☐

No

If yes, identify below the State Agency/Department that received the goods or services, the type(s) of goods or services previously provided, and the amount received for the provision of such goods or services.

STATE AGENCY/DEPARTMENT	TYPE OF GOODS/SERVICES	AMOUNT RECEIVED

Have you or any of your partners, divisions, or any related business units previously applied and received any grants from any State Agency/Department in the current or last fiscal year?

☐

Yes

☐

No

If yes, identify the State Agency/Department that awarded the grant, the date such grant was awarded, and the amount of the grant.

STATE AGENCY/DEPARTMENT	DATE GRANT AWARDED	AMOUNT OF GRANT

- List below the name(s) and address(es) of all public officials/public employees with whom you, members of your immediate family, or any of your employees have a family relationship and who may directly personally benefit financially from the proposed transaction. Identify the State Department/Agency for which the public officials/public employees work. (Attach additional sheets if necessary.)

NAME OF PUBLIC OFFICIAL/EMPLOYEE	ADDRESS	STATE DEPARTMENT/AGENCY

2. List below the name(s) and address(es) of all family members of public officials/public employees with whom you, members of your immediate family, or any of your employees have a family relationship and who may directly personally benefit financially from the proposed transaction. Identify the public officials/public employees and State Department/Agency for which the public officials/public employees work. (Attach additional sheets if necessary.)

NAME OF FAMILY MEMBER	ADDRESS	NAME OF PUBLIC OFFICIAL/ PUBLIC EMPLOYEE	STATE DEPARTMENT/ AGENCY WHERE EMPLOYED
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If you identified individuals in items one and/or two above, describe in detail below the direct financial benefit to be gained by the public officials, public employees, and/or their family members as the result of the contract, proposal, request for proposal, invitation to bid, or grant proposal. (Attach additional sheets if necessary.)

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Describe in detail below any indirect financial benefits to be gained by any public official, public employee, and/or family members of the public official or public employee as the result of the contract, proposal, request for proposal, invitation to bid, or grant proposal. (Attach additional sheets if necessary.)

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List below the name(s) and address(es) of all paid consultants and/or lobbyists utilized to obtain the contract, proposal, request for proposal, invitation to bid, or grant proposal:

NAME OF PAID CONSULTANT/LOBBYIST	ADDRESS
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***By signing below, I certify under oath and penalty of perjury that all statements on or attached to this form are true and correct to the best of my knowledge. I further understand that a civil penalty of ten percent (10%) of the amount of the transaction, not to exceed \$10,000.00, is applied for knowingly providing incorrect or misleading information.***

Signature

Date

Notary's Signature

Date

Date Notary Expires

*Act 2001-955 requires the disclosure statement to be completed and filed with all proposals, bids, contracts, or grant proposals to the State of Alabama in excess of \$5,000.*

Attachment E

January 1, 2007

MEMORANDUM

TO: All Persons Under Contract With the Agency and All Agency Staff

FROM: Carol H. Steckel, MPH  
Commissioner

SUBJECT: Reporting to Ethics Commission by Persons Related to Agency Employees

Section 36-25-16(b) Code of Alabama (1975) provides that anyone who enters into a contract with a state agency for the sale of goods or services exceeding \$7500 shall report to the State Ethics Commission the names of any adult child, parent, spouse, brother or sister employed by the agency.

Please review your situation for applicability of this statute. The address of the Alabama Ethics Commission is:

100 North Union Street  
RSA Union Bldg.  
Montgomery, Alabama 36104

A copy of the statute is reproduced below for your information. If you have any questions, please feel free to contact Bill Butler, Agency General Counsel, at 242-5741.

**Section 36-25-16. Reports by persons who are related to public officials or public employees and who represent persons before regulatory body or contract with state.**

- (a) When any citizen of the state or business with which he or she is associated represents for a fee any person before a regulatory body of the executive branch, he or she shall report to the commission the name of any adult child, parent, spouse, brother, or sister who is a public official or a public employee of that regulatory body of the executive branch.
- (b) When any citizen of the State or business with which the person is associated enters into a contract for the sale of goods or services to the State of Alabama or any of its agencies or any county or municipality and any of their respective agencies in amounts exceeding seven thousand five hundred dollars (\$7500) he or she shall report to the commission the names of any adult child, parent, spouse, brother, or sister who is a public official or public employee of the agency or department with whom the contract is made.
- (c) This section shall not apply to any contract for the sale of goods or services awarded through a process of public notice and competitive bidding.
- (d) Each regulatory body of the executive branch, or any agency of the State of Alabama shall be responsible for notifying citizens affected by this chapter of the requirements of this section. (Acts 1973, No. 1056, p. 1699, §15; Acts 1975, No. 130, §1; Acts 1995, No. 95-194, p. 269, §1.)

**Instructions for Certification Regarding Debarment, Suspension,  
Ineligibility and Voluntary Exclusion**

(Derived from Appendix B to 45 CFR Part 76--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions)

1. By signing and submitting this contract, the prospective lower tier participant is providing the certification set out therein.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this contract was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Alabama Medicaid Agency (the Agency) may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the Agency if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, and voluntarily excluded, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this contract is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this contract that, should the contract be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this contract that it will include this certification clause without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Agency may pursue available remedies, including suspension and/or debarment.